

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

ERWIN RATH and	§	
RATH PROPANE GAS CO., INC.	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. _____
	§	
CRUM & FORSTER INSURANCE	§	
COMPANY and UNITED STATES FIRE	§	
INSURANCE COMPANY	§	
Defendants.	§	

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to 28 U.S.C. §§1441 and 1446, Defendant United States Fire Insurance Company (“U.S. Fire”) files this Notice of Removal on the basis of diversity of citizenship and jurisdictional amount, and respectfully shows the Court the following:

REMOVAL IS TIMELY

1. U.S. Fire is the Defendant in Cause No. 19-08-24,935, filed in the 135th Judicial District Court of DeWitt County, Texas, styled *Erwin Rath, et al v. Crum & Forster Insurance Company, et al.* Plaintiffs commenced this civil action against U.S. Fire in the state court on August 19, 2019. U.S. Fire was first served with Plaintiff’s Original Petition (the “Petition”) on October 2, 2019.

2. Therefore, service of process in this cause was served on U.S. Fire not more than thirty (30) days before the filing of this notice, and this Notice of Removal is being filed within one year of the date suit was first filed in state court.

BASIS FOR REMOVAL

3. Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a), 1441(a) and 1446.

A. There is Complete Diversity

4. In its Original Petition, Plaintiffs Erwin Rath and Rath Propane and Gas Co., Inc. (collectively “Rath”) acknowledge that they are citizens of the State of Texas. (Pl.’s Orig. Pet. at ¶ 1)

5. Both at the time the lawsuit was originally filed, and at the time of removal, Defendant U.S. Fire is a corporation incorporated and existing under the laws of New Jersey, keeping its principal place of business in Morristown, New Jersey.

B. The Amount in Controversy Exceeds \$75,000.00

6. This is a civil action in which the amount in controversy exceeds the jurisdictional limits of \$75,000.00. In determining the amount in controversy, the Court may consider, “penalties, statutory damages, and punitive damages.” *St Paul Reinsurance Co, Ltd v Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see also Ray v State Farm Lloyds*, 1999 WL 151667, at *2 - 3 (N.D. Tex. 1999) (finding sufficient amount in controversy in plaintiff’s case against the insurer for breach of contract, bad faith, violations of the Texas Insurance Code and Texas Deceptive Trade Practices Act and mental anguish). Plaintiffs allege that U.S. Fire is liable for breach of contract, common law and statutory bad faith, and violations of Chapters 541 and 542 of the Texas Insurance. Plaintiffs seek to recover actual damages, consequential damages, prejudgment interest, additional statutory damages, post-judgment interest, and reasonable and necessary attorneys’ fees. Plaintiff’s Original Petition does not allege an amount in controversy,

but its pre-suit notice letter identifies actual damages and attorneys' fees of at least \$46,184. (Attached as Exhibit 3). Accordingly, the amount in controversy clearly exceeds \$75,000.¹

7. Accordingly, by virtue of diversity of citizenship the United States district courts have original jurisdiction.

STATE COURT DOCUMENTS BEING FILED

8. Pursuant to 28 U.S.C. §1446(a), attached hereto as Exhibit "1" is the Index of Matters Being Filed that clearly identifies each document and indicates the date the document was filed in state court. Attached as Exhibit "2" is a copy of the docket sheet, and all documents filed in the state court action are attached.

PRAYER

Therefore, based upon 28 U.S.C. §§1441 and 1446, U.S. Fire respectfully requests that this action be removed to the United States District Court for the Southern District of Texas, Victoria Division, and that it be granted such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/ Christopher H. Avery
BRIAN S. MARTIN
State Bar No. 13055350
E-Mail: bmartin@thompsoncoe.com
CHRISTOPHER H. Avery
State Bar No. 24069321
E-Mail: cavery@thompsoncoe.com
One Riverway, Suite 1400
Houston, TX 77056
Telephone: (713) 403-8210
Telecopy: (713) 403-8299

¹ See, e.g., *Theodoridis v. Balboa Ins. Co.*, CV G-10-497, 2011 WL 13257650, at *1 (S.D. Tex. Feb. 3, 2011), *report and recommendation adopted*, CV G-10-497, 2011 WL 13257647 (S.D. Tex. Feb. 24, 2011) (denying Motion to Remand where pre-suit demand letter sought approximately \$46,000).

**ATTORNEYS FOR DEFENDANT
UNITED STATES FIRE INSURANCE
COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of October, 2019, a true and correct copy of the foregoing instrument has been forwarded to all counsel of record.

/s/ Christopher H. Avery
CHRISTOPHER H. AVERY